2184.

SUPREME COURT OF THE UNITED STATES.

No. 189.

THE UNITED STATES, EX RELATIONE BEVERLEY TUCKER, PLAINTIFF IN ERROR,

vs.

A. G. SEAMAN, DEFENDANT IN ERROR.

IN ERROR TO THE CIRCUIT COURT OF DISTRICT OF COLUMBIA, FOR WASHINGTON COUNTY, D. C.

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GIDEON, print.

2185

THE UNITED STATES OF AMERICA, *ss.*

The President of the United States, to the judges of the circuit court of the District of Columbia, sitting for the county of Washington, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said court before you, or some of you, wherein Beverly Tucker is plaintiff in error, and A. G. Seaman is defendant in error, a manifest error hath happened, to the great damage of the said plaintiff in error, as by his complaint appears; we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, now sitting at the city of Washington, immediately, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, which of right, and according to the laws and custom of the United States, should be done.

Witness the honorable Roger B. Taney, chief justice of said Supreme Court.

Issued this 27th day of April, 1854.

JNO. A. SMITH,
Clerk circuit court, Washington county, Dist. of Col'a.

DISTRICT OF COLUMBIA, *to wit:*

The United States of America, to A. G. Seaman, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, now sitting in the city of Washington, immediately, pursuant to a writ of error filed in the clerk's office of the circuit court of the District of Columbia, for the county of Washington, whereln Beverly Tucker is plaintiff in error, and you are defendant in error, to show cause, if any there be, why judgment rendered against the said Beverly Tucker, in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in this behalf.

Witness the honorable William Cranch, chief judge of the circuit court of the District of Columbia, the 26th day of April, 1854.

Issued this 27th day of April, 1854.

Service acknowledged.

Service of the above is acknowledged.

P. B. KEY,
Counsel for A. G. Seaman.

April 27, 1854.

Style of court.

DISTRICT OF COLUMBIA, *sct.*

At a circuit court of the District of Columbia, begun and held in and for the county of Washington, at the city of Washington, on the fourth Monday of March, being the twenty-seventh day of the same month, in the year of our Lord one thousand eight hundred and fifty-four, and of the independence of the United States the seventy-eighth.

Present, the honorable William Cranch, chief judge; James S. Morsell, James Dunlop, assistant judges; Jonah D. Hoover, Marshal; John A. Smith, clerk.

Parties.

In the record of the proceedings of the said court, among others are the following, to wit:

THE UNITED STATES, ex relatione Beverley Tucker,
vs.
A. G. SEAMAN, Superintendent of Public Printing.

Be it remembered, that the said relator, by Reverdy Johnson and James M. Carlisle, esquires, his attorneys, filed in court here, on the thirteenth day of April, in the year eighteen hundred and fifty-four, the following petition and exhibits, to wit:

Petition.

THE UNITED STATES, ex relatione Beverly Tucker,
vs.
A. G. SEAMAN, Superintendent of the Public Printing.

To the honorable the judge of the circuit court of the District of Columbia, the petition of Beverly Tucker respectfully showeth:

That your petitioner is the public printer for the Senate of the United States, having been duly elected to that office for the term of the present Congress, and having duly qualified therein, and being in the actual exercise thereof. That a certain A. G. Seaman is the superintendent of the public printing, duly appointed to the said last mentioned office under the act of Congress, approved the 26th day of August, 1852.

That the duties of the said superintendent of the public printing are defined in and by the said act of Congress, and particularly in and by the 3d section thereof; whereby it is declared, among other things, "That it shall be the duty of the said superintendent to receive from the secretary of the Senate and clerk of the House of Representatives all matter ordered by Congress to be printed, and from the several chiefs of departments and heads of bureaux all matter ordered by them

respectively to be printed at the public expense, and to keep a faithful account of the same in the order in which the same shall be received, in a book or books to be kept by him for that purpose. He shall deliver said matter to the public printer or printers in the order in which it shall be received, unless otherwise ordered by the Joint Committee on Printing."

Which said duty of delivering the matter so received to the public printer or printers, your petitioner is advised and humbly submits, is a purely ministerial duty.

Your petitioner further shows, that in and by the 7th section of the said act of Congress it is provided, "That when any document shall be ordered to be printed by both houses of Congress, the entire printing of such document shall be done by the printer of that house which first ordered the same."

Your petitioner further shows, that a certain document, that is to say, the annual report of the Commissioner of Patents, a document printed annually by the public printer, under the authority of Congress, was regularly transmitted to Congress by the said Commissioner of Patents at the present session, and after your petitioner was so as aforesaid elected printer for the Senate, and while he was so as aforesaid acting as such officer, to wit, in the month of January, 1854; and on the 31st day of January aforesaid, the Senate of the United States ordered the said report to be printed; and afterwards the said report, to wit, on the day of was, by the House of Representatives, in like manner ordered to be printed; which said document is now deliverable to be printed according to the order in which the same has been received by said superintendent, and which said Joint Committee on Printing have not otherwise ordered in the premises; so that the said document was ordered to be printed by both houses of Congress, and by the terms of the aforesaid act of Congress "the entire printing of such document shall be done by the printer of that house which first ordered the same;" that is to say, by the express terms of the said act of Congress, it belongs to your petitioner as printer for the Senate, who first ordered the printing of the said document, to wit, the annual report of the Commissioner of Patents, so as aforesaid communicated to Congress in the month of January, 1854, to print the said document; and by the express terms of the same act of Congress it is the duty of the said superintendent of public printing to deliver the matter, or, as it is technically called by printers, the copy of the said report, to your petitioner, as the public printer entitled by the terms of the said act to receive and print the same, and to have and enjoy the profits and advantages resulting from such delivery and printing according to the terms, force, and effect of the said act. Your petitioner further shows, that the profits and advantages resulting from the printing of the portion of the said report herein after referred to, and which is withheld from him as hereinafter stated, are considerable, and that if he be deprived thereof the value of his said office will be materially diminished, and the terms and true intent and meaning of the said act of Congress will be defeated of their effect and operation.

Your petitioner further shows, that the said A. G. Seaman, superintendent of the public printing, hath in fact received and delivered to your petitioner a certain portion of the said document, to wit, "The Annual Report of the Commissioner of Patents;" and hath also received and now holds a certain other portion of the said document, to wit, of the "Annual Report of the Commissioner of Patents," and hath refused and still refuses to deliver the same to your petitioner, to be printed according to the terms and provisions of the said act of Congress, and threatens and intends to deliver the same to the printer for the House of Representatives, to be printed by him, the said last mentioned printer, for his profit and advantage, thereby defeating and defrauding your petitioner of his just rights as public printer for the Senate, and disobeying and contemning the express and mandatory terms and provisions of the act of Congress aforesaid, and refusing to perform the ministerial duty of delivering the said last mentioned matter and copy as he is expressly ordered and required to do by the same act of Congress, whereby his office is created, and the duties thereof expressly defined and declared; all which is in contempt of the laws of the United States, in violation of the ministerial duty so as aforesaid imposed on the said superintendent of the public printing, and to the great wrong and injury of your petitioner. Wherefore, and for as much as your petitioner hath no other remedy whatsoever, (as will plainly appear by reference to the aforesaid act of Congress,) may it please your honors to award the United States writ of mandamus to be directed to the said A. G. Seaman, superintendent of the public printing, commanding him to deliver to your petitioner, as the printer of that house of Congress, to wit, the Senate, which first ordered the annual report aforesaid of the Commissioner of Patents to be printed, the whole of the matter or copy of the said report which has been ordered to be printed, and especially the portion of said report commonly known and distinguished as the "agricultural portion" of the report of the said commissioner, and by that name communicated to and received by the Senate of the United States on the 20th March last; and commanding him, the said A. G. Seaman, superintendent as aforesaid, in such other and further manner, and to such other and further effect as upon consideration of the premises may appear to be due to justice and the dignity of the law, and the rights of your petitioner in the premises; and your petitioner will ever pray, &c.

BEVERLEY TUCKER,
Printer U. S. Senate.
REVERDY JOHNSON and
J. M. CARLISLE, *Of counsel.*

DISTRICT OF COLUMBIA,
Washington county, sct.

Circuit court of the District of Columbia, March term, 1854.

Personally appears Beverly Tucker, in open court, and makes oath, that the matters and facts stated in the aforegoing petition, so far as stated

of his own knowledge, are true, and so far as stated on information and belief, he believes them true as stated.

Test: JNO. A. SMITH, *Clerk.*

April 13, 1854.

And now, at the same time, the said relator, by his counsel aforesaid, files in court here the following notice and motion, to wit:

Circuit court, D. C., March term, 1854.

THE UNITED STATES, ex relatione Beverley Tucker, vs. A. G. SEAMAN, Superintendent of the Public Printing. } Notice of motion.

The petition of the relator, verified by his affidavit, having been filed and presented to this court, setting forth in substance that the relator is the public printer of the Senate of the United States, duly elected and qualified, and in the actual exercise of the said office; that the said A. G. Seaman is the superintendent of the public printing, duly appointed and qualified, and in the actual exercise of the said last mentioned office; that the said superintendent hath received, and now holds a certain portion of a certain public document, to wit, the agricultural portion of the annual report of the Commissioner of Patents, and that the said document hath been ordered to be printed by both houses of Congress, but was first ordered to be printed by the Senate, and that such document, in such case, is by the terms of the act of Congress in such case made and provided to be printed for both houses by the said relator, as printer of the Senate, which house of Congress first ordered the same to be printed; and that it is the duty of the said superintendent, according to the terms of the said act, now to deliver the matter or copy of the said document to the said relator as such printer; and that, to him, the said relator, it belongs by the terms of the said act to receive and print the same, and to have and enjoy the profits and advantages resulting from such delivery and printing; and that the duty of so delivering the said matter or copy is a merely ministerial duty imposed by the said act; and that the said superintendent hath refused, and still refuses, to deliver the same to the said relator, and threatens and intends to deliver the same to the printer of the House of Representatives, whereby the said relator will be defeated of his rights and profits in the premises; and further setting forth and averring as in and by the said petition before the court here fully and at large appears, and praying the United States writ of mandamus to be directed to the said A. G. Seaman, superintendent of the public printing, commanding him to deliver to the said relator, as printer of the Senate, the aforesaid the whole of the matter or copy of the annual report of the Commissioner of Patents which has been ordered to be printed, and especially the portion of the said report commonly known as the agricultural portion

of the said report, and what was by that name communicated to and received by the Senate of the United States on the 20th of March last, and commanding the said A. G. Seaman in such other and further manner, and to such other and further effect, as upon consideration of the premises may appear to be due to justice and the dignity of the laws and the rights of the said relator in the premises.

Thereupon, on this 13th day of April, 1853, the said relator, by Reverdy Johnson and James M. Carlisle, esqs., his counsel, moves the court for a rule upon the said A. G. Seaman, superintendent of the public printing, to show cause to the court here on Saturday, the 22d day of April next, why the said mandamus should not issue as prayed; which motion is received by the court, and ordered to be heard on Saturday, the 15th instant, at 10 o'clock.

Test: JNO. SMITH, *Clerk.*

Which said notice and motion has endorsed thereon the following certificate of service thereof, to wit:

"Service by reading the within to the defendant this 14th day of April, 1854.

"J. D. HOOVER, *Marshal.*"

Motion granted.

And now afterwards, to wit, on the said last mentioned day, that is to say, on the 15th day of April, in the year 1854, comes as well the said relator, by his counsel aforesaid, as the said A. G. Seaman, superintendent, &c., by P. B. Key, esq., his counsel, and the said motion being argued by counsel and considered by the court: It is ordered, that the said motion be granted, and that the said defendant do show cause to the court here, on Saturday, the 22d inst., at 10 o'clock, a. m., why the said mandamus shall not be issued as prayed; of which said order the said defendant here in court has notice.

Test: JNO. A. SMITH, *Cl'k.*

Whereupon, afterwards, to wit, on the said 22d day of April, inst., come into court here the said relator and said A. G. Seaman, by their respective counsel, when the said A. G. Seaman, by P. B. Key, esq., his counsel, filed in court here the following answer, to wit:

Defendant's answer.

To the honorable the judges of the circuit court of the District of Columbia.

The answer of A. G. Seaman to the petition of Beverly Tucker respectfully showeth, that he has been duly appointed to the office of superintendent of the public printing, and that he is in the exercise of the duties of said office. That his duties are defined and prescribed by the act of Congress approved the 26th day of August, 1852. That the provisions of this act in regard to the delivery by this respondent of

all matter ordered to be printed have been strictly complied with. That on the 31st of January, 1854, the Commissioner of Patents communicated to the Senate the mechanical report from his office, which was ordered to be printed, and on the 1st of February the same document to the House of Representatives and ordered to be printed, and according to the provision of the 7th section of the act of Congress of August 26, 1852, which provides that "when any document shall be ordered to be printed by both houses of Congress, the entire printing of such document shall be done by the printer of that house which first ordered the same." The entire printing of this document was required by this respondent to be executed by Beverly Tucker, the Senate printer, and the copy was placed in his hands for this purpose.

This respondent further shows that on the 20th of March, 1854, the Commissioner of Patents communicated to the House and Senate the agricultural report from his office which was in each house ordered to be printed, the order being first made by the House of Representatives; and in compliance with the law referred to this respondent required the entire printing of this last mentioned document to be executed by A. O. P. Nicholson, the printer of the House.

And this respondent most respectfully submits that the discharge of the duties of his said office of superintendent of the public printing is not subject to the control of this honorable court.

P. B. KEY,
For respondent.

Judgment.

And now this cause coming on to be heard upon the petition of the relator, the answer of the defendant therein, and sundry proofs touching the question whether or not the different portions of the report of the Commissioner of Patents for the year 1854 constitute one and the same document; and being fully argued by counsel for each party: The court being of opinion that by the terms of the act of Congress approved 26th day of August, 1852, entitled "An act to provide for executing the public printing, and establishing the prices thereof, and for other purposes," the superintendent of public printing is subjected wholly to the control of the Joint Committee on Printing, provided for by said act in the matter complained of by the relator, and that by consequence this court has no jurisdiction to grant the relator relief by writ of mandamus. One of the judges being also of opinion that if the court have erred in the above construction of the statute of the 26th August, 1852, and the Joint Committee on Printing have no control of the superintendent, then the superintendent of the public printing has a discretion to decide the matter in controversy in this case, and this court cannot control him in the exercise of that discretion; and on this last ground also the same judge thinks this court has no jurisdiction to grant to the relator the relief prayed by him:

It is considered by the court, and accordingly it is ordered and adjudged by the aforesaid court, that the said writ of mandamus as by the

of the said report, and what was by that name communicated to and received by the Senate of the United States on the 20th of March last, and commanding the said A. G. Seaman in such other and further manner, and to such other and further effect, as upon consideration of the premises may appear to be due to justice and the dignity of the laws and the rights of the said relator in the premises.

Thereupon, on this 13th day of April, 1853, the said relator, by Reverdy Johnson and James M. Carlisle, esqs., his counsel, moves the court for a rule upon the said A. G. Seaman, superintendent of the public printing, to show cause to the court here on Saturday, the 22d day of April next, why the said mandamus should not issue as prayed; which motion is received by the court, and ordered to be heard on Saturday, the 15th instant, at 10 o'clock.

Test: JNO. SMITH, *Clerk.*

Which said notice and motion has endorsed thereon the following certificate of service thereof, to wit:

"Service by reading the within to the defendant this 14th day of April, 1854.

"J. D. HOOVER, *Marshal.*"

Motion granted.

And now afterwards, to wit, on the said last mentioned day, that is to say, on the 15th day of April, in the year 1854, comes as well the said relator, by his counsel aforesaid, as the said A. G. Seaman, superintendent, &c., by P. B. Key, esq., his counsel, and the said motion being argued by counsel and considered by the court: It is ordered, that the said motion be granted, and that the said defendant do show cause to the court here, on Saturday, the 22d inst., at 10 o'clock, a. m., why the said mandamus shall not be issued as prayed; of which said order the said defendant here in court has notice.

Test: JNO. A. SMITH, *Cl'k.*

Whereupon, afterwards, to wit, on the said 22d day of April, inst., come into court here the said relator and said A. G. Seaman, by their respective counsel, when the said A. G. Seaman, by P. B. Key, esq., his counsel, filed in court here the following answer, to wit:

Defendant's answer.

To the honorable the judges of the circuit court of the District of Columbia.

The answer of A. G. Seaman to the petition of Beverly Tucker respectfully showeth, that he has been duly appointed to the office of superintendent of the public printing, and that he is in the exercise of the duties of said office. That his duties are defined and prescribed by the act of Congress approved the 26th day of August, 1852. That the provisions of this act in regard to the delivery by this respondent of

all matter ordered to be printed have been strictly complied with. That on the 31st of January, 1854, the Commissioner of Patents communicated to the Senate the mechanical report from his office, which was ordered to be printed, and on the 1st of February the same document to the House of Representatives and ordered to be printed, and according to the provision of the 7th section of the act of Congress of August 26, 1852, which provides that "when any document shall be ordered to be printed by both houses of Congress, the entire printing of such document shall be done by the printer of that house which first ordered the same." The entire printing of this document was required by this respondent to be executed by Beverly Tucker, the Senate printer, and the copy was placed in his hands for this purpose.

This respondent further shows that on the 20th of March, 1854, the Commissioner of Patents communicated to the House and Senate the agricultural report from his office which was in each house ordered to be printed, the order being first made by the House of Representatives; and in compliance with the law referred to this respondent required the entire printing of this last mentioned document to be executed by A. O. P. Nicholson, the printer of the House.

And this respondent most respectfully submits that the discharge of the duties of his said office of superintendent of the public printing is not subject to the control of this honorable court.

P. B. KEY,
For respondent.

Judgment.

And now this cause coming on to be heard upon the petition of the relator, the answer of the defendant therein, and sundry proofs touching the question whether or not the different portions of the report of the Commissioner of Patents for the year 1854 constitute one and the same document; and being fully argued by counsel for each party: The court being of opinion that by the terms of the act of Congress approved 26th day of August, 1852, entitled "An act to provide for executing the public printing, and establishing the prices thereof, and for other purposes," the superintendent of public printing is subjected wholly to the control of the Joint Committee on Printing, provided for by said act in the matter complained of by the relator, and that by consequence this court has no jurisdiction to grant the relator relief by writ of mandamus. One of the judges being also of opinion that if the court have erred in the above construction of the statute of the 26th August, 1852, and the Joint Committee on Printing have no control of the superintendent, then the superintendent of the public printing has a discretion to decide the matter in controversy in this case, and this court cannot control him in the exercise of that discretion; and on this last ground also the same judge thinks this court has no jurisdiction to grant to the relator the relief prayed by him:

It is considered by the court, and accordingly it is ordered and adjudged by the aforesaid court, that the said writ of mandamus as by the

relator in his petition prayed for be refused, and that said relator's petition be and the same is hereby dismissed with costs.

Test: JNO. A. SMITH, *Cl'k.*

And thereupon, the said relator, by his counsel aforesaid, prays an appeal from the judgment aforesaid, so as aforesaid rendered to the Supreme Court of the United States, and it is granted to him: Whereupon the said relator, by his counsel aforesaid, files in court here a certain writing obligatory, commonly called an appeal bond, and which is contained in the following words, to wit:

Appeal bond.

Know all men by these presents that we, Beverly Tucker and Wm. M. Overton, are held and firmly bound unto the United States of America in the full and just sum of two hundred dollars current money of the United States of America, to be paid to the said United States of America, or their certain attorney, to which payment, well and truly to be made and done, we bind ourselves, and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated this twenty-seventh day of April, in the year 1854.

Whereas, lately at a circuit court for the county of Washington, in a suit pending in said court wherein the United States of America at the relation of Beverly Tucker is plaintiff, and A. G. Seaman, superintendent of the public printing of the United States, is defendant, the said court ordered and adjudged that the petition of the said plaintiff be rejected.

And whereas the said plaintiff having obtained a writ of error and filed a copy thereof in the clerk's office of the said circuit court to reverse the judgment in the aforesaid suit, and a citation directed to to the said A. G. Seaman, superintendent as aforesaid, citing and admonishing him to be and appear at the Supreme Court of the United States, held in the city of Washington, at the term thereof now in session.

Now, the condition of the above obligation is such, that if the said Beverly Tucker shall prosecute the said writ of error with effect, and answer all damages and costs if he shall fail to make his plea good, then the above obligation to be void, otherwise to be and remain in full force and virtue.

BEVERLEY TUCKER, [SEAL.]
WM. M. OVERTON. [SEAL.]

Witness—SAM'L CHILTON.

Approved by the court, 27th April, 1854.

Test: JNO. A. SMITH, *Cl'k.*

Which being read and heard, and the security in said bond being by the court here approved: It is therefore ordered by the court here, that a transcript of the record of proceedings aforesaid, in the cause aforesaid, and all things thereunto relating, with the writ of error and

a copy of the appeal bond hereto annexed, be transmitted to the said Supreme Court accordingly.

Test: JNO. A. SMITH, *Cl'k.*

DISTRICT OF COLUMBIA,
Washington county, to wit:

I, John A. Smith, clerk of the circuit court of the District of Columbia for Washington county, hereby certify, that the aforegoing is a full, true and perfect transcript of the record of proceedings had in the said court, in which the United States ex relatione Beverly Tucker is petitioner, and A. G. Seaman, superintendent of public printing, is defendant.

In testimony whereof I hereto subscribe my name and affix the seal of said court, this 28th day of April, 1854.

[SEAL.] JNO. A. SMITH, *Cl'k.*